Present: Lascelles C.J. and Wood Renton J. 1912.

AGAR *et al.* *v.* RANEWAKE *et al.*

284—D. C. Colombo, 32,349.

Forfeiture of lease—Failure to keep property in good order.

Where there has been a breach of covenants to keep the property demised in good order, the lessee is not entitled to equitable relief against forfeiture of lease except on the ground that the penalty of forfeiture would be outrageous or "*immanis*."

THE facts are set out in the judgment.

E. W. Jayewardene (with him *Mendis*), for the appellants.—A lessee is granted relief against a provision for forfeiture of the lease unless there has been a notably grave and damnifying misuse of the property (*Perera v. Thaliff* [1]).

A clause of forfeiture is only intended as security for the due payment of the rent (*Perera v. Perera* [2]).

The lessee has an option of purchasing the leased property. He is prepared to exercise that option. There has been no injury to the reversion. The lessee will restore the property in any event in good order. It is the lessor who is attempting to resile from his agreement.

He cited *Ewart v. Fryer*,[3] *Mekkison v. Thomson*,[4] *10 Halsbury 541, Story on Equity, sec. 1316, 3 Bal. 213, 3 Tam. 103, 1 S. C. R. 35, 3 N. L. R. 248.*

A. St. V. Jayewardene (with him *Bartholomeusz*), for the respondents.—This case is different from those cited where forfeiture of a lease was refused for non-payment of rent. Here there has been a breach of the conditions as regards keeping the leased property in order. The lease for non-fulfilment of the conditions has become void. The Court has exercised its discretion in cancelling the lease. It is not open to the lessee to exercise his option now.

E. W. Jayewardene, in reply.—The principle as regards the covenants for non-payment of rent and other covenants is identical. As long as the property itself is not injured, or as long as the damage is easily ascertainable or is slight, the Court should not declare a forfeiture, which is in the nature of a penalty.

Cur. adv. vult.

[1] *(1904) 8 N. L. R. 118.*
[2] *(1907) 10 N. L. R. 230.*
[3] *(1901) 1 Ch. 499.*
[4] *(1883) Cab. & El. 72.*

December 12, 1912. LASCELLES C.J.—

Agar v. Ranewake

The argument of this case has occupied a good deal of time, but the case in itself seems to me to be a fairly clear one. The claim is by the trustees of the will of the late Mr. J. S. Agar for the cancellation of a lease granted by them in favour of the first defendant and the second defendant. The ground of the claim is a breach of the covenants in the lease by the lessees. There is also a further claim of damages to the amount of Rs. 4,250. The conditions in the lease which the lessees are alleged to have infringed are clearly defined in the issues fixed in the case. They are as follows:—

(1) Whether the lessees during the lease failed to maintain under cultivation with tea in a husbandlike manner not less than 200 acres of the estate?
(2) Have the lessees neglected the weeding of the said estate?
(3) Have the lessees neglected to clear the drains on the said estate?
(4) Have the lessees failed to maintain the estate roads?
(5) Have the lessees failed to pay the Government road assessment for the years 1909 and 1910?
(6) Have the lessees failed to keep in good order and repair the bungalow and set of lines and factory and fittings?

To all these issues, excepting (5), the learned District Judge has found in the affirmative. The correctness of these findings has not been seriously challenged. They are based on the evidence of Mr. Smale, whose experience and impartiality in the matter have not been questioned. The defence that has now been pressed on us is that, in the circumstances of the case, the first defendant is entitled to some form of equitable relief. Now, a number of authorities have been cited to us to prove that the English principles of giving relief against a forfeiture on the ground of non-payment of rent have been introduced into Ceylon, and are now a part of our law. This, I think, is beyond question. But no authority has been adduced to us, and I do not believe that any can be found, that in a case where there has been a breach of covenants to keep the property demised in good order, the lessee is entitled to equitable relief. The only ground, as far as I can see, on which he could claim such relief, is that the penalty of forfeiture would be outrageous or "*immanis*" in the language of the Roman-Dutch law in the circumstances of the particular case. This is a ground which is not and could not be raised in the present case. It has been put to us that the case is one of considerable hardship. It is said that the lessees had under the lease an option of buying the property at a sum of Rs. 15,000; that the first defendant is now prepared to pay this sum, and that, therefore, the plaintiffs will not in any way be injured by their lessee's failure to observe the covenants in the lease. This reasoning is, I think, not sound. The option of

the lessees to buy the estate at the agreed sum was dependent on their observing the covenants in the lease. When they had failed to do so, the plaintiffs, although the lease had not actually been cancelled, might fairly and reasonably have contracted to sell the property to another, as it is said that they have done. It is quite clear that the lessees, by failing to carry out the covenants in the lease, have forfeited their option to buy the property, and have now no right to insist on it. We have heard a good deal of the position of the seventh defendant as regards his case. But it seems to me that any agreement that he or his wife may have made to buy the estate, or any option that they may be entitled to under the sub-lease to the seventh defendant, are quite irrelevant to the question which we have here to decide, which is simply whether the plaintiffs are entitled to a cancellation of the lease. The only other question raised on the appeal is that of damages. The District Judge has awarded the full amount claimed, and on the evidence I do not see that he could have done otherwise. The evidence of Mr. Smale was that, so far from the amount claimed being excessive, it was really considerably less than the actual amount of damages which had been sustained owing to the failure of the lessees to comply with the terms of the lease. The appeal in my opinion fails, and must be dismissed with costs.

WOOD RENTON J.—

I entirely agree, and have nothing to add.

Appeal dismissed.